

Please Return To Cashiers

Noti. Int. Bearing Account J.WON, J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

KENNETH F. KRYZDA,

Defendant.

DOC # _____

Civil Action No. 04 CV 5853 (RO)

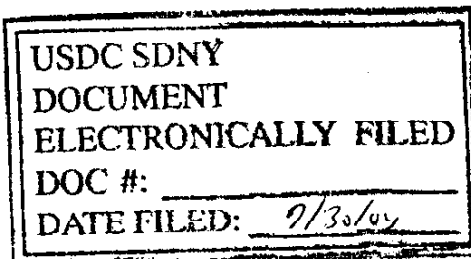
#04, 1444

FINAL JUDGMENT AS TO DEFENDANT KENNETH F. KRYZDA

The Securities and Exchange Commission having filed a Complaint and Defendant Kenneth F. Kryzda ("Kryzda") having entered a general appearance; consented to the Court's jurisdiction over him and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment As To Defendant Kenneth F. Kryzda ("Final Judgment"):

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Kryzda and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate



commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Kryzda is liable for disgorgement of \$78,944, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$5,341.16, for a total of \$84,285.16. Kryzda shall satisfy this obligation by paying \$84,285.16 within ten business days after entry of this Final Judgment to the Clerk of this Court, together with a cover letter identifying Kryzda as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Kryzda shall simultaneously transmit photocopies of such payment and letter to Christopher Conte, Assistant Director, Division of Enforcement, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0707. By making this payment, Kryzda relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Kryzda. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds,

ML

together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In accordance with the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may propose a plan to distribute the Fund subject to the Court's approval.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Kryzda shall pay a civil penalty in the amount of \$118,416 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Kryzda shall make this payment within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Kryzda as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Kryzda shall simultaneously transmit photocopies of such payment and letter to Christopher Conte, Assistant Director, Division of Enforcement, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0707.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent and Undertakings of Kryzda is incorporated herein with the same force and effect as if fully set forth herein, and that Kryzda shall comply with all of the undertakings and agreements set forth therein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: 7/30/04 ✓


UNITED STATES DISTRICT JUDGE *dyj*

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 8/2/04

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

KENNETH F. KRYZDA,

Defendant.

Civil Action No.

**CONSENT AND UNDERTAKINGS
OF DEFENDANT KENNETH F. KRYZDA**

1. Defendant Kenneth F. Kryzda ("Kryzda") acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over him and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Kryzda admits), Kryzda hereby consents to the entry of the Final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Kryzda from, directly or indirectly, violating Section 10(b) of the Securities and Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5];
- (b) orders Kryzda to pay disgorgement in the amount of \$78,944, plus prejudgment interest thereon in the amount of \$5,341.16; and
- (c) orders Kryzda to pay a civil penalty in the amount of 118,416 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

KJK

3. Kryzda agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that he pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Kryzda further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that he pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

4. Kryzda waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Kryzda waives the right, if any, to appeal from the entry of the Final Judgment.

6. Kryzda enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce him to enter into this Consent.

7. Kryzda agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Kryzda will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Kryzda waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to him of its terms and conditions. Kryzda further agrees to provide counsel for the Commission, within

KJH

thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that he has received and read a copy of the Final Judgment.

10. This Consent and Final Judgment resolve only the specific claims and allegations asserted against Kryzda in this civil proceeding. This Consent and the Final Judgment do not preclude the Commission from bringing any other action or proceeding against Kryzda in the future based on allegations and/or claims not asserted in this civil proceeding. In addition, consistent with 17 C.F.R 202.5(f), Kryzda acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Kryzda waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Kryzda further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Kryzda understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Kryzda understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. In

KJK

compliance with this policy, Kryzda agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Kryzda hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Kryzda breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Kryzda's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Kryzda hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to pursue reimbursement of attorney's fees or other fees, expenses, or costs expended by him to defend against this action. For these purposes, Kryzda agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

13. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Kryzda (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints his undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Kryzda's travel, lodging, and

AK

subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over him in any United States District Court for purposes of enforcing any such subpoena.

14. Kryzda agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

15. Kryzda agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: July 19, 2004

Kenneth F. Kryzda
Kenneth F. Kryzda

EL C. LIC. JOSÉ HIGINIO NÚÑEZ Y BANDERA, NOTARIO N° 112 DEL DISTRITO FEDERAL, ESTADOS UNIDOS MEXICANOS, CERTIFICA: Que ante mí compareció el Sr. KENNETH FRANK KRYZDA MC CARTHY, cuya identidad acredité con base al pasaporte expedido a su favor en el que aparece su fotografía, nombres y apellidos, y a mi juicio tiene capacidad legal, y quien declaró ante mí que conoce el idioma inglés lo suficiente para discernir jurídicamente sus obligaciones por lo que conoce en todos sus términos el contenido de este documento y en lo que éste consiste y reconoció ante mí ser suya la firma que lo calza por ser de su puño y letra y ser la misma que acostumbra usar en todos sus asuntos legales. -----

El presente documento consta de cinco páginas selladas y firmadas al reverso por el suscrito Notario. -----

Para constancia se levantó el Acta N° 55,459 en el protocolo de la Notaría a mi cargo, en esta misma fecha. -----

México, D. F., a 19 de Julio de 2004.- DOY FE. -----



[Signature]



Approved as to form:

[Signature] / 2B
Jonathan L. Hochman, Esq.
Schindler Cohen & Hochman LLP
100 Wall Street
15th Floor
New York, NY 10005
(212) 277-6330
Attorney for Kenneth F. Kryzda



Approved as to form:

Jonathan L. Hochman / 23
 Jonathan L. Hochman, Esq.
 Schindler Cohen & Hochman LLP
 100 Wall Street
 15th Floor
 New York, NY 10005
 (212) 277-6330
 Attorney for Kenneth F. Kryzda

5



GOBIERNO DEL DISTRITO FEDERAL
 CONSEJERÍA JURÍDICA Y
 DE SERVICIOS LEGALES
 Dirección General Jurídica
 y de Estudios Legislativos



GOBIERNO DEL DISTRITO FEDERAL
 CONSEJERÍA JURÍDICA Y
 DE SERVICIOS LEGALES
 Dirección General Jurídica
 y de Estudios Legislativos

D. F.

México

Apostille

(Convention de la Haye du 5 octobre 1961)

Derechos \$ 47.80

No. Orden 8220

En Mexico el presente documento público ha sido firmado

por LIC. JOSE HIGINIO NUÑEZ Y BANDERA

quien actúa en calidad de NOTARIO No. 112 DEL DISTRITO FEDERAL

y está revestido del sello correspondiente a NOTARIA 112

DISTRITO FEDERAL, MEXICO



Certificado en MEXICO, D.F. por OSCAR LOPEZ ROSAS, -

SUBDIRECTOR CONSULTIVO Y DE CONTRATOS DE LA D.G.J.E.L. DE
 LA CONSEJERIA JURIDICA Y DE SERVICIOS LEGALES.

MEXICO, D.F. el 20 de JULIO de 2004

DISTRITO FEDERAL
 JURÍDICA Y
 S LEGALES
 Dirección General
 Jurídica
 y de Estudios
 Legislativos

nzc/p

Firma